

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED
MAR 06 2009
U.S. DISTRICT COURT
ELKINS WV 26241

RENATO BENITES,

Petitioner,

v.

Civil Action No. 2:08 CV 117
(Maxwell)

WAYNE A. PHILLIPS,

Respondent.

ORDER

It will be recalled that on December 1, 2008, *pro se* Petitioner Renato Benites, instituted the above-styled civil action by filing an Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241, seeking an order directing that the Bureau of Prisons grant him up to one year off his sentence pursuant to 18 U.S.C. § 3621(e)(2)(B) for his active participation/completion of the 500 hour Residential Drug Addiction Program.

It will further be recalled that the case was referred to United States Magistrate Judge David J. Joel in accordance with Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

On January 14, 2009, Magistrate Judge Joel entered an Opinion/Report And Recommendation wherein he recommended that the Petitioner's § 2241 Application be denied and dismissed with prejudice.

In his Opinion/Report And Recommendation, Magistrate Judge Joel provided the parties with ten (10) days from the date of said Opinion/Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said

§ 2241 (Docket No. 1) be, and the same is hereby, **DENIED and DISMISSED with prejudice.**

It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner and to counsel of record in the above-styled civil action.

ENTER: March 6, 2009


United States District Judge